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Attorney for Defendants Wells Fargo Merchant

Services LLC; Wells Fargo Bank, N.A.; Wells

Fargo & Co.; and First Data Merchant Services

Corporation, now known as First Data

Merchant Services LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LA MOJARRA LOCA, INC.,

Plaintiff,

v.

WELLS FARGO MERCHANT SERVICES
LLC; WELLS FARGO BANK, N.A.;
WELLS FARGO & CO.; FIRST DATA
MERCHANT SERVICES CORPORATION;
DOES I-X INDIVIDUALLY; ROE
CORPORATIONS I-X,

Defendants.

Case No.:

NOTICE OF REMOVAL

Defendants Wells Fargo & Co. ("Wells Fargo"), Wells Fargo Merchant Services LLC ("WFMS"), Wells Fargo Bank, N.A. ("WFB"), and First Data Merchant Services Corporation, now known as First Data Merchant Services LLC ("First Data") (collectively, "Defendants"), pursuant to 28 U.S.C. §§ 1441 and 1446, hereby file this Notice of Removal of this action from

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1 the Eighth Judicial District Court for Clark County, Nevada, to the United States District Court,
2 District of Nevada, and in support state as follows:

3 1. Plaintiff La Mojarra Loca, Inc. ("Plaintiff") commenced a civil action, styled *La*
4 *Mojarra Loca, Inc. v. Wells Fargo Merchant Services LLC; Wells Fargo Bank, N.A.; Wells Fargo*
5 *& Co.; First Data Merchant Services Corporation*, in the Eighth Judicial District Court for Clark
6 County, Nevada, by filing a Complaint on March 12, 2019, which is currently pending as Case No.
7 A-19-790984-C ("State Court Action").

8 2. The Summons and a copy of Plaintiff's Complaint were served on First Data on or
9 about March 29, 2019. A copy of the Summons, Complaint, and other documents served on First
10 Data are attached to this Notice as Exhibit 1 and constitute all process, pleadings, and orders served
11 on Defendants.

12 3. In the State Court Action, as set forth in the Complaint, Plaintiff seeks to recover
13 actual damages and attorneys' fees and costs from Defendants based upon allegations for breach of
14 contract and unjust enrichment.

15 4. This Court has original jurisdiction over the claims alleged by Plaintiff in the
16 Complaint pursuant to 28 U.S.C. § 1332(a) because this is a civil action between citizens of different
17 states, and Plaintiff alleges the amount in controversy exceeds the sum or value of \$75,000.
18 Defendants deny all liability to Plaintiff.

19 5. Specifically, Defendants show the Court this civil action is removable for the
20 reasons set forth below:

21 a. According to the Complaint, Plaintiff La Mojarra Loca, Inc. is a Nevada
22 corporation. (Compl. ¶ 1). Upon information and belief, Plaintiff's principal place of
23 business is in Las Vegas, Nevada. Therefore, for diversity purposes, Plaintiff is a citizen of
24 the state of Nevada.

25 b. While the Complaint lists the principal place of business for Wells Fargo,
26 the Complaint is silent as to Wells Fargo's state of incorporation. (*Id.* at ¶ 5). Wells Fargo
27 is a corporation organized and existing under the laws of the State of Delaware with its
28

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1 principal place of business in San Francisco, California. For diversity purposes, Wells Fargo
2 is therefore a citizen of Delaware and California.

3 c. The Complaint is silent as to the citizenship of WFB. WFB is a national
4 banking association with its main office in Sioux Falls, South Dakota. For diversity
5 purposes, WFB is therefore a citizen of South Dakota.

6 d. The Complaint lists First Data Merchant Services Corporation as a
7 Defendant in this case. First Data Merchant Services Corporation changed its name and its
8 corporate registration with the State of Florida to First Data Merchant Services LLC in
9 January 2015. The Complaint is silent as to the citizenship of First Data. First Data is a
10 limited liability company whose sole member is CESI Holdings, LLC. CESI Holdings, LLC
11 is a limited liability company whose sole member is First Data Corporation. First Data
12 Corporation is a Delaware corporation with its principal place of business in Atlanta,
13 Georgia. First Data is therefore a citizen of Delaware and Georgia.

14 e. WFMS is a limited liability company whose members are First Data and
15 WFB.

16 i. As detailed above, First Data is a citizen of Georgia and Delaware.

17 ii. As detailed above, WFB is a national banking association with its
18 main office in Sioux Falls, South Dakota.

19 iii. For diversity purposes, WFMS is therefore a citizen of Delaware,
20 Georgia, and South Dakota.

21 f. The Complaint alleges an amount in excess of the jurisdictional amount. *See*
22 28 U.S.C. § 1332(a). Specifically, Plaintiff seeks to recover actual damages and attorneys'
23 fees and costs, which Plaintiff alleges is in excess of \$620,000. Therefore, it is "'facially
24 apparent' from the complaint that the jurisdictional amount is in controversy." *Abrego*
25 *Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006). Defendants deny all
26 liability to Plaintiff.

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1 g. Accordingly, this case is properly removable pursuant to 28 U.S.C. §§ 1332,
2 1441, and 1446.

3 h. All properly joined and served Defendants join in this Notice of Removal.

4 6. This Notice of Removal is filed within thirty days after the service of the Summons
5 and Complaint on First Data and is therefore timely. 28 U.S.C. § 1441(b)(1).

6 7. Defendants will promptly file a copy of this Notice of Removal with the Clerk of
7 the Eighth Judicial District Court for Clark County, Nevada, and a copy of this Notice of Removal
8 will also be served on Plaintiff.

9 8. Defendants reserve the right to assert all defenses, objections, and counterclaims to
10 Plaintiff's Complaint.

11 WHEREFORE, Defendants hereby request that the above-referenced action, now pending
12 in the Eighth Judicial District Court for Clark County, Nevada, be removed therefrom to this Court.

13 DATED this 29th day of April, 2019.

14 SEMENZA KIRCHER RICKARD

15
16 /s/ Jarrod L. Rickard

17 Lawrence J. Semenza, III, Bar No. 7174
18 Christopher D. Kircher, Bar No. 11176
19 Jarrod L. Rickard, Bar No. 10203
20 Katie L. Cannata, Esq., Bar No. 14848
21 10161 Park Run Dr., Ste. 150
22 Las Vegas, Nevada 89145

23 *Attorney for Defendants Wells Fargo Merchant*
24 *Services LLC; Wells Fargo Bank, N.A.; Wells*
25 *Fargo & Co.; and First Data Merchant Services*
26 *Corporation, now known as First Data Merchant*
27 *Services LLC*
28

CERTIFICATE OF SERVICE

I am employed by the law firm of Semenza Kircher Rickard in Clark County, Nevada. I am over the age of 18 and not a party to this action. The business address is 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

On the 29th day of April, 2019, I served the document(s), described as:

NOTICE OF REMOVAL

- ☒ by placing the ☐ original ☒ a true copy thereof enclosed/attached and delivered:
- ☐ a. **ECF System** (*You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary*)
- ☒ b. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada. The envelope(s) were mailed with postage thereon fully prepaid. I am readily familiar with Semenza Kircher Rickard's practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day, which is stated in the proof of service, with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

Daniel W. Anderson, Esq.
MILLS & ANDERSON
703 South 8th Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff La Mojarra Loca, Inc.

- ☐ c. **BY PERSONAL SERVICE.**
- ☒ d. **BY DIRECT EMAIL**

MILLS & ANDERSON
Daniel W. Anderson, Esq., dan@millsnv.com
attorneys@millsnv.com

- ☐ e. **BY FACSIMILE TRANSMISSION.**

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Teresa N. Beiter
An Employee of Semenza Kircher Rickard

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